

UNITED STATES DISTRICT COURT
FOR
THE DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

2019 MAR 25 PM 4:33

CLERK

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TYLER WESTBROOK, PIPER)
WALLACE WESTBROOK,)
Plaintiffs,)

V.)

Docket No.

2:19 cv-46

TOWN OF BRISTOL, VERMONT;)
BRISTOL POLICE DEPARTMENT;)
GEORGE CROWE, in his individual and)
official capacities; KEVIN GIBBS, in his)
individual and official capacities;)
STATE OF VERMONT; VERMONT)
STATE POLICE; BRETT FLANSBURG,)
In his individual and official capacities;)
MATTHEW DALY, in his individual and)
official capacities; EDEN NEARY,)
in his individual and official capacities,)
Defendants.)

COMPLAINT AND JURY DEMAND

JURISDICTION AND VENUE

1. This action arises under Title 42 of the United States Code, § 1983, 1988 and Vermont law. Jurisdiction is conferred upon this court by Title 28 of the United States Code, § 1331 and 1343. This court has subject matter jurisdiction of Plaintiffs' pendent or supplemental state law claims under 18 U.S.C. § 1367.

2. Venue is proper in this District under 28 U.S.C. § 1391(b) and (e) in that the unlawful actions challenged herein occurred in the District and all of the parties reside in the district.

PARTIES

3. Plaintiff, Tyler Westbrook, at all relevant times, was a resident of Bristol, Vermont.
4. Defendant Town of Bristol is a Vermont municipality and owns, operates, manages, directs, and controls the Bristol Police Department.
5. Defendant Bristol Police Department is an agent of the Town of Bristol and is responsible for providing law enforcement services to the Town of Bristol.
6. Chief Kevin Gibbs was, at all times relevant to this Complaint, the Chief of Bristol Police Department. In that capacity, he is the official responsible for setting and enforcing the policies, customs, and practices of the Bristol Police Department. He is sued in his individual and official capacity.
7. George Crowe was, at all times relevant to this Complaint, a police officer with the Bristol Police Department. He is sued in his individual and official capacity.
8. Defendant Vermont State Police (“VSP”) is an agency of the State of Vermont.
9. Defendants Brett Flansburg, Matthew Daly and Eden Neary were, at all times relevant to this Complaint, officers with the Vermont State Police.

10. At all times relevant to this Complaint, all Defendants acted under color of law.

FACTS

11. Prior to midnight on March 25, 2016 an alarm sounded at Bristol Discount Beverage in Bristol, Vermont. The alarm sounded for an extended period.

12. Plaintiff, Tyler Westbrook, ("Mr. Westbrook") resides in the property abutting the parking lot of the Bristol Discount Beverage. The area is a residential neighborhood and a small commercial shopping area on the main street in the village of downtown Bristol.

13. Mr. Westbrook heard the sounding of the alarm and, after a period of time, went out in his slippers to check on his friend's business. Mr. Westbrook and his wife and two children are long-time residents of Bristol as are his wife's parents and sister's family. They shop at Bristol Discount Beverage on a regular basis.

14. Mr. Westbrook was turning to go back inside his house when he noticed a Bristol Police cruiser arriving at the parking lot. By this time the alarm was no longer sounding but had been going off for approximately 20-30 minutes. Officer Crowe exited his cruiser and Mr. Westbrook immediately made his presence known providing information that he had observed about the alarm to assist the officer. Mr. Westbrook approached voluntarily and casually and had nothing in his hands. Mr. Westbrook, being a neighboring homeowner, indicated that he was checking on his friend's business.

15. Officer Crowe, in a low voice from some distance, told Mr. Westbrook to stay there. Mr. Westbrook said, "What's that?" He then indicated in the direction of his yard and house and said, "I'm headed home." Officer Crowe told him not to leave and "...you're going to do what I tell you." Mr. Westbrook, who had turned to walk to his yard, directly abutting the parking lot of the store, said, "Adam's my friend." Mr. Westbrook had no weapon and made no overt action to harm Officer Crowe in any way. Mr. Westbrook was casually walking away from Officer Crowe toward his home posing no threat whatsoever.
16. Officer Crowe then pointed his pistol directly at Mr. Westbrook's head and said "I don't care! Get on the ground! Now! Get on the ground! All the way on the ground!" Mr. Westbrook immediately complied and went face down on the ground. Officer Crowe kneeled on Mr. Westbrook's back keeping the gun pointed directly at Mr. Westbrook's head at point blank range.
17. Officer Crowe had no probable cause to believe Mr. Westbrook had committed a crime.
18. The action of pointing the gun at Mr. Westbrook, the use of deadly force, and physically detaining him was a violation of Officer Crowe's duties under policy and State and Federal law. In so doing, Officer Crowe violated Mr. Westbrook's rights to be free from unlawful seizures of his person under the United States Constitution.

19. Officer Crowe, with the gun still pointing at Mr. Westbrook's head, yelled "if you're not going to listen to me, I'm going to make you listen to me! You understand!" Mr. Westbrook said, "Yes sir. What I'm trying to tell ya is...I just came up here because I live right there . . . here . . . Adam's my friend. The alarm went off. I heard rattling inside."

20. Prior to pointing his gun at Mr. Westbrook's head, Officer Crowe did not ask Mr. Westbrook to verbally identify himself, though Mr. Westbrook tried several times to tell him he lived "right there" and who he was. Officer Crowe did not ask Mr. Westbrook to put his hands up. He did not use any other manner of de-escalation techniques or commands to secure Mr. Westbrook's presence or secure the scene. He did not use any escort techniques or take down techniques, nor would these have been warranted. He did not use any aerosol agents or a taser or any other less lethal force options, nor would these have been warranted. His first instinct and action were the use of deadly force, i.e. drawing his firearm on Mr. Westbrook. Mr. Westbrook did not have a weapon, and made no physically aggressive or overt behaviors toward Mr. Crowe at any time. Mr. Westbrook posed no threat to Officer Crowe at any point and certainly not any threat sufficient to justify the use of deadly force.

21. Mr. Westbrook complied with Officer Crowe's commands immediately, remained on the ground and did not move. Mr. Westbrook said, "Will you stop aiming your gun at me please."

22. Officer Crowe patted him down and found no weapons. He said loudly, "You're not moving do you understand me?" Mr. Westbrook said calmly, "I understand you." He continued to provide helpful information to officer Crowe from his position face down on the ground as Officer Crowe walked away and called for backup.
23. Officer Crowe told dispatch he had a "subject detained" and Mr. Westbrook, from the ground, said "I'm not a suspect." Officer Crowe yelled, "I said don't move!" Mr. Westbrook said, "I'm not moving I'm talking, I have a right to talk."
24. In spite of Mr. Westbrook's continued compliance and respectful demeanor, Officer Crowe said, "I'll tell you what. Look away from me. Put your arms all the way out to your side." Officer Crowe then handcuffed Mr. Westbrook behind his back and put him in the cruiser.
25. The action of pointing the gun at Mr. Westbrook and physically detaining him was a violation of Officer Crowe's duties under policy and State and Federal law. In so doing, Officer Crowe violated Mr. Westbrook's rights to be free from unlawful seizures of his person under the United States Constitution. Officer Crowe also violated Mr. Westbrook's rights to freedom of expression under the United States Constitution by first detaining and then handcuffing Mr. Westbrook for talking in a way Officer Crowe disapproved of.

26. Officer Crowe used deadly force, i.e. pointed the 45-caliber pistol at Mr.

Westbrook's head, and physically detained him in order to gain compliance and to suppress Mr. Westbrook's speech and not to secure the scene or for self-defense.

27. Officer Crowe failed to properly record the entire event in violation of policy.

28. While Mr. Westbrook was in the cruiser, he asked several times for Officer

Crowe to, "please call his wife and call his lawyer." A Vermont State Police Sargent, Matthew Daly, soon arrived. Mr. Westbrook, relieved, said, "Good the cops are here."

29. Next Trooper Brett Flansburg arrived and then Trooper Eden Neary. Officer

Crowe asked Trooper Flansburg to watch Mr. Westbrook while Sargent Daly and Officer Crowe walked around the building. They confirmed the building was secure.

30. Trooper Flansburg asked Mr. Westbrook his name and Mr. Westbrook identified himself immediately.

31. The property owner arrived and confirmed he knew Mr. Westbrook and, again, that the building was secure.

32. After nearly an hour Officer Crowe released Mr. Westbrook. Mr. Westbrook was angry with the Officer and yelled profanity as he walked toward his home for a few minutes and before entering his home.

33. One of the troopers joked about driving Mr. Westbrook to an isolated dirt road and making him walk home.

34. Mr. Westbrook's wife, Piper Wallace Westbrook ("Mrs. Wallace Westbrook") called to speak with Officer Crowe as she was concerned about the progression of events.

35. Defendants acted willfully, wantonly and maliciously.

36. Defendants acted recklessly and or callously and nor deliberately indifferent to Plaintiffs' rights under the Vermont and United States Constitution.

37. Defendants caused Mr. Westbrook a loss of liberty, invasion of privacy, pain, physical harm and extreme emotional distress.

38. Mr. Westbrook, Mrs. Wallace Westbrook and their children, Noble and Justice Westbrook (ages 15 and 17 at the time) have experienced extreme distress, stress, fear and emotional pain as a result of the Defendants' actions.

COUNT I VIOLATION OF 42 U.S.C. § 1983 EXCESSIVE FORCE

39. Paragraphs 1 through 38 of the Complaint are incorporated by reference and fully set forth herein.

40. When Defendant Crowe made the decision to use deadly force and he willfully and in violation of Chapter I, Article 11 of the Vermont Constitution and the Fourth and Fourteenth Amendments to the United States Constitution as implemented by 42 U.S.C. § 1983 subjected Tyler Westbrook to an unreasonable seizure employing unreasonable use of force knowing that Mr. Westbrook posed no legitimate threat to Defendant Crowe. The force was not

reasonably justified by the threat that Mr. Westbrook posed to Defendant Crowe.

41. Plaintiff Westbrook incurred pain and injury, humiliation, embarrassment and mental anguish as a direct and proximate result of the Defendant Crowe's willful and unconstitutional actions.

COUNT II VIOLATION OF 42 U.S.C. § 1983 UNLAWFUL ARREST

42. Paragraphs 1 through 41 of the Complaint are incorporated by reference and fully set forth herein.

43. When Defendant Crowe made the decision to arrest and seize Mr.

Westbrook's person by detaining him and then handcuffing him, he willfully violated Chapter I, Article 11 of the Vermont Constitution and the Fourth and Fourteenth Amendments to the United States Constitution as implemented by 42 U.S.C. §1983 and subjected Tyler Westbrook to an unreasonable seizure.

44. Plaintiff Westbrook incurred pain and injury, humiliation, embarrassment and mental anguish as a direct and proximate result of the Defendant Crowe's willful and unconstitutional actions.

COUNT III VIOLATION OF 42 U.S.C. § 1983 UNLAWFUL ARREST

45. Paragraphs 1 through 44 of the Complaint are incorporated by reference and fully set forth herein.

46. When Defendant Crowe made the decision to arrest and seize Mr.

Westbrook's person by holding him in the cruiser for an extended period of

time, he willfully violated Chapter I, Article 11 of the Vermont Constitution and the Fourth and Fourteenth Amendments to the United States Constitution as implemented by 42 U.S.C. §1983 subjected Tyler Westbrook to an unreasonable seizure.

47. Plaintiff Westbrook incurred pain and injury, humiliation, embarrassment and mental anguish as a direct and proximate result of the Defendant Crowe's willful and unconstitutional actions.

COUNT IV VIOLATION OF 42 U.S.C. § 1983

48. Paragraphs 1 through 47 of the Complaint are incorporated by reference and fully set forth herein.

49. The Town of Bristol, Bristol Police and former Chief Kevin Gibbs displayed deliberate indifference to the problem of Officer Crowe's disregard for the safety and constitutional liberties of citizens by failing to train officers and institute policies to ensure proper use of force and adherence to constitutional freedoms related to unlawful seizure as provided by Chapter I Article 11 of the Vermont Constitution and the Fourth and Fourteenth Amendments to the United States Constitution as implemented by 42 U.S.C. § 1983.

50. Additionally, the Town of Bristol, Bristol Police and former Chief Kevin Gibbs are responsible for the constitutional violations by: Inadequately supervising and/or training its officers concerning the use of deadly force and unlawful seizure; training and instituting policies that allow for the

premature use of excessive force and unlawful seizure; failing to adequately discipline, train or retrain officers involved in misconduct and selection, retention and assignation of officers with demonstrable propensities for excessive force, violence, unlawful seizure and other misconduct.

51. The policies for the use of deadly force as established by the Town of Bristol, Bristol Police and former Chief Kevin Gibbs are unconstitutional on their face and as applied in this circumstance.

52. The Town of Bristol, Bristol Police and former Chief Kevin Gibbs ratified the conduct of Defendant Crowe and continue to approve and condone the officer's actions in their entirety in spite of knowing about his propensity for misconduct.

53. The known and obvious consequence of the policies in place and failing to properly train and discipline the officers was that the Town of Bristol and Bristol Police would be placed in recurring situations in which the constitutional violations described in this Complaint would result.

54. Plaintiff Westbrook incurred pain and injury, humiliation, embarrassment and mental anguish as a direct and proximate result of these actions.

COUNT V VIOLATION OF 42 U.S.C. § 1983 UNLAWFUL ARREST

55. Paragraphs 1 through 54 of the Complaint are incorporated by reference and fully set forth herein.

56. When Defendants Flansburg, Daly and Neary made the decision to maintain the unlawful seizure of Mr. Westbrook's person by holding him in the cruiser for an extended period of time they willfully violated Chapter I, Article 11 of the Vermont Constitution and the Fourth and Fourteenth Amendments to the United States Constitution as implemented by 42 U.S.C. §1983 and subjected Tyler Westbrook to an unreasonable seizure.

57. Plaintiff Westbrook incurred pain and injury, humiliation, embarrassment and mental anguish as a direct and proximate result of the Defendants' willful and unconstitutional actions

COUNT VI ASSAULT AND BATTERY

58. Paragraphs 1 through 57 of the Complaint are incorporated by reference and fully set forth herein.

59. Defendant Crowe, aided and abetted by the other Defendants assaulted and battered Plaintiff Tyler Westbrook.

60. Plaintiff Westbrook incurred pain and injury, humiliation, embarrassment and mental anguish as a direct and proximate result of Defendant Crowe's unlawful assault and battery.

COUNT VII NEGLIGENCE

61. Paragraphs 1 through 60 of the Complaint are incorporated by reference and fully set forth herein.

62. Defendant Crowe was negligent in failing to act reasonably and failing to abide by policy and State and Federal law.

63. Plaintiff Westbrook incurred pain and injury, humiliation, embarrassment and mental anguish as a direct and proximate result of these action.

COUNT VIII NEGLIGENCE

64. Paragraphs 1 through 63 of the Complaint are incorporated by reference and fully set forth herein.

65. Defendants Town of Bristol and Bristol Police were negligent in supervising, training, and retaining Defendant Crowe who was known to act in a dangerous and/or aggressive manner and to utilize excessive force and fail to abide by constitutional requirements and policy.

66. Plaintiff Westbrook incurred pain and injury, humiliation, embarrassment and mental anguish as a direct and proximate result of these actions.

COUNT IX INTENTIONAL INFLICTION OF EMOTIONAL HARM

67. Paragraphs 1 through 66 of the Complaint are incorporated by reference and fully set forth herein.

68. Defendant Crowe willfully and intentionally inflicted emotional distress upon Plaintiff Westbrook when he created a situation that intended to elicit an emotional response, pointed a gun at Mr. Westbrook's head, restrained him, forcefully held him to the ground handcuffed him, and held him handcuffed in a cruiser.

69. Plaintiff Westbrook incurred extreme emotional duress, pain and injury, humiliation, embarrassment and mental anguish as a direct and proximate result of these actions.

COUNT X VIOLATION OF 42 U.S.C. § 1983 FIRST AMENDMENT

70. Paragraphs 1 through 69 of the Complaint are incorporated by reference and fully set forth herein.

71. Mr. Westbrook, at multiple relevant times during this encounter, was engaged in protected speech activity and political commentary protected by the First and Fourteenth amendments to the United States Constitution.

72. By engaging in all of the actions described Officer Crowe was retaliating and suppressing Mr. Westbrook's right to free expression by threat of force and use of deadly force. Officer Crowe did this as a direct result of Mr. Westbrook's exercise of his right to free speech.

COUNT XI LOSS OF CONSORTIUM

73. Paragraphs 1 through 72 of the Complaint are incorporated by reference and fully set forth herein.

74. Ms. Wallace Westbrook enjoyed a close familial relationship with Mr. Westbrook. As a result of the defendant's actions, she suffered a loss of consortium of Mr. Westbrook and is entitled to all such damages as a result.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request entry of judgment in their favor and against defendants as follows:

- A. For compensatory damages in an amount to be determined at trial;
- B. For punitive damages against individual defendants in an amount to be determined at trial;

C. For reasonable costs of this suit and attorney's fees; and

D. For such further relief as this Court may deem just, proper and appropriate.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all counts set forth above.

Dated at Bristol, VT this 25th day of March 2019.

TYLER WESTBROOK, PIPER
WALLACE WESTBROOK, Plaintiffs

By: 

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